FEB 19 1974

MICHAEL RODAK, JR., CLE

In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1199

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

SAN FRANCISCO TYPOGRAPHICAL UNION No. 21, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, et al.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Memorandum of [redacted] RESPONDENT CALIFORNIA NEWSPAPERS, INC. d/b/a SAN RAFAEL INDEPENDENT JOURNAL

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Memorandum of Charging Party

QUESTION PRESENTED

The question presented is as stated in the petition (p. 2).[1]

STATEMENT[2]

We urge, as we have in No. 73-1024, that the petition should be granted. However, we do not agree that this peti-

1. The question is the same as presented in the petition for a writ of certiorari filed by the Charging Party herein (California Newspapers, Inc., d/b/a San Rafael Independent Journal) in No. 73-1024 (p. 2 thereof).

2. The statement in the Board's petition is correct in so far as it goes. However, a full statement appears in No. 73-1024.

tion and the one in No. 73-1024 should be held together until this Court has decided the *Electrical Workers* cases,[3] and that it then dispose of these petitions in accordance with the decision in those cases. We urge the Court to consolidate this case and No. 73-1024 with the *Electrical Workers* cases for argument and decision. Our reason for so requesting will be readily apparent.

In the *Electrical Workers* cases, the supervisors performed rank and file work behind the picket lines.

As stated in No. 73-1024, differently than in the *Electrical Workers* cases, one of the supervisors in the instant case did not perform rank and file work behind the picket line. The other three supervisors performed some rank and file work, but mainly performed their supervisory duties (Pet. 73-1024, p. 6, n. 5).

Basically, we agree with the Board on the legal issue. However, should the Court reach a conclusion on the legal issue predicated upon the particular facts as to the functions the supervisors were performing behind the picket line, then the facts in the instant case being different in that respect than in the *Electrical Workers* cases, would warrant a different conclusion. We believe with the Board and urge that an employer has a right to utilize supervisory employees in any phase of its operations for the purpose of continuing to do business while under strike, without such employees being subject to discipline by a union to which they belong. Assuming, *arguendo*, that the Court should hold a union can impose discipline where such employee members perform rank and file work, we submit that it is nevertheless a violation of the Act to impose discipline

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3. *National Labor Relations Board v. Local 2150, International Brotherhood of Electrical Workers*, No. 73-795; *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, et al*, No. 73-556.

where such employees perform their regular supervisory duties or substantially perform such duties.[4]

For that reason we request that the Court consolidate this case and No. 73-1024 with the *Electrical Workers* cases, *supra*.

Respectfully submitted,

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Dated: February 15, 1974.

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4. The Court of Appeals for the District of Columbia in *International Brotherhood of Elec. Wkrs. v. N.L.R.B.*, 487 F.2d 1143, 1156-57, 1174, in which this Court granted certiorari (73-795 and 73-556) acknowledged that section 8(b)(1)(B) prohibits union discipline of supervisors who cross the union picket line to perform supervisory duties.